

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-third Legislature First Regular Session - 2015

IN THE SENATE

SENATE BILL NO. 1105

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 61-121, IDAHO CODE, TO REVISE THE DEFINITION OF "TELEPHONE CORPORATION" AND "TELECOMMUNICATION SERVICE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 62-603, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 62-618, IDAHO CODE, TO PROVIDE PREEMPTION OF CERTAIN PROVIDERS OF CERTAIN SERVICES; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-618A, IDAHO CODE, TO CLARIFY THAT NO STATE GOVERNMENT ENTITY OR POLITICAL SUBDIVISION SHALL REGULATE VOIP AND IP-ENABLED SERVICES WITH EXCEPTIONS; AND AMENDING SECTIONS 18-6609, 26-2239, 61-1302 AND 62-609, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 61-121, Idaho Code, be, and the same is hereby amended to read as follows:

61-121. TELEPHONE CORPORATION -- TELECOMMUNICATION SERVICES. (1) The term "telephone corporation" when used in title 61, Idaho Code, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication services for compensation within this state. Except as otherwise provided by statute, telephone corporations providing : (a) radio paging, mobile radio telecommunication services, answering services, ~~(including computerized or otherwise automated answering or voice message services), or;~~ (b) one-way transmission to subscribers of: (i) video programming~~;~~ or (ii) other programming service~~;~~ and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying; or (c) voice over internet protocol service or internet protocol-enabled service are exempt from any requirement of title 61, or chapter 6, title 62, Idaho Code, in the provision of such services.

(2) "Telecommunication service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means ~~(which that~~ includes message telecommunication service and access service~~),~~ which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. Except as otherwise provided by statute, "telecommunication service" does not include: (a) the one-way transmission to subscribers of: (i) video programming~~;~~ or (ii) other programming service~~;~~ and subscriber interaction, if any, which is required for the selection of such video programming or other programming service~~;~~ or surveying, ~~or;~~ (b) the provision of radio paging, mobile radio telecommunication services, answering services, ~~(including computerized or otherwise automated answering or voice message services),~~

1 or (c) voice over internet protocol service or internet protocol-enabled  
 2 service, and such services shall not be subject to the provisions of title  
 3 61, Idaho Code, or title 62, Idaho Code.

4 SECTION 2. That Section 62-603, Idaho Code, be, and the same is hereby  
 5 amended to read as follows:

6 62-603. DEFINITIONS. As used in this chapter:

7 (1) "Basic local exchange service" means the provision of access lines  
 8 to residential and small business customers with the associated transmis-  
 9 sion of two-way interactive switched voice communication within a local ex-  
 10 change calling area.

11 (2) "Basic local exchange rate" shall mean the monthly charge imposed  
 12 by a telephone corporation for basic local exchange service, but shall not  
 13 include any charges resulting from action by a federal agency or taxes or  
 14 surcharges imposed by a governmental body which are separately itemized and  
 15 billed by a telephone corporation to its customers.

16 (3) "Chapter" as used herein shall mean chapter 6, title 62, Idaho Code.

17 (4) "Commission" means the Idaho public utilities commission.

18 (5) "Facilities-based competitor" means a local exchange carrier that  
 19 offers basic local exchange service either: (a) exclusively over its own  
 20 telecommunications service facilities; or (b) predominantly over its own  
 21 facilities in combination with the resale of telecommunications services of  
 22 another carrier.

23 (6) "Incumbent telephone corporation" means a telephone corporation or  
 24 its successor which was providing basic local exchange service on or before  
 25 February 8, 1996.

26 (7) "Internet protocol-enabled service" or "IP-enabled service"  
 27 means, except as provided in the definition of "voice over internet proto-  
 28 col service" herein, any service capability, functionality, or application  
 29 provided using internet protocol or any successor protocol, that enables an  
 30 end user to send or receive a communication in internet protocol format or  
 31 any successor format regardless of whether the communication is voice, data  
 32 or video.

33 (8) "Local exchange calling area" means a geographic area encompass-  
 34 ing one (1) or more local communities as described in maps, tariffs, rate  
 35 schedules, price lists, or other descriptive material filed with the com-  
 36 mission by a telephone corporation, within which area basic local exchange  
 37 rates rather than message telecommunication service rates apply.

38 (89) "Message telecommunication service" (MTS) means the transmis-  
 39 sion of two-way interactive switched voice communication between local ex-  
 40 change calling areas for which charges are made on a per-unit basis, not in-  
 41 cluding wide area telecommunications service (WATS), or its equivalent, or  
 42 individually negotiated contracts for telecommunication services.

43 (910) "Residential customers" shall mean persons to whom telecommuni-  
 44 cation services are furnished at a dwelling and which are used for personal  
 45 or domestic purposes and not for business, professional or institutional  
 46 purposes.

47 (101) "Rural telephone company" means a local exchange carrier operat-  
 48 ing entity to the extent that the entity:

1 (a) Provides common carrier service to any local exchange carrier study  
2 area that does not include either:

3 (i) ~~a~~Any incorporated place of ten thousand (10,000) inhabitants  
4 or more, or any part thereof, based on the most recently available  
5 population statistics of the bureau of the census; or

6 (ii) ~~a~~Any territory, incorporated or unincorporated, included in  
7 an urbanized area, as defined by the bureau of the census as of Au-  
8 gust 10, 1993;

9 (b) Provides telephone exchange service, including exchange access, to  
10 fewer than fifty thousand (50,000) access lines;

11 (c) Provides telephone exchange service to any local exchange carrier  
12 study area with fewer than one hundred thousand (100,000) access lines;  
13 or

14 (d) Has less than fifteen percent (15%) of its access lines in communi-  
15 ties of more than fifty thousand (50,000) on the date of enactment of the  
16 federal telecommunications act of 1996.

17 (112) "Small business customers" shall mean a business entity, whether  
18 an individual, partnership, corporation or any other business form, to whom  
19 telecommunication services are furnished for occupational, professional or  
20 institutional purposes, and which business entity does not subscribe to more  
21 than five (5) access lines which are billed to a single billing location.

22 (123) "Telecommunications act of 1996" means the federal telecommuni-  
23 cations act of 1996, ~~p~~Public ~~l~~Law ~~n~~No. 104-104 as enacted effective February  
24 8, 1996.

25 (134) "Telecommunication service" means the transmission of two-way  
26 interactive switched signs, signals, writing, images, sounds, messages,  
27 data, or other information of any nature by wire, radio, lightwaves, or other  
28 electromagnetic means ~~(which that includes message telecommunication ser-~~  
29 ~~vices and access service)~~, which originate and terminate in this state, and  
30 are offered to or for the public, or some portion thereof, for compensation.  
31 Except as otherwise provided by statute, "telecommunication service" does  
32 not include: (a) the one-way transmission to subscribers of: (i) video  
33 programming~~;~~ or (ii) other programming service, and subscriber interac-  
34 tion, if any, which is required for the selection of such video programming  
35 or other programming service~~;~~ or surveying~~;~~ ~~or~~; (b) the provision of ra-  
36 dio paging, mobile radio telecommunication services, answering services,  
37 ~~(including computerized or otherwise automated answering or voice message~~  
38 ~~services)~~~~;~~ or (c) voice over internet protocol service or internet proto-  
39 col-enabled service and such services shall not be subject to the provisions  
40 of title 61, Idaho Code, or title 62, Idaho Code.

41 (145) "Telephone corporation" means every corporation or person, their  
42 lessees, trustees, receivers or trustees appointed by any court whatso-  
43 ever, providing telecommunication services for compensation within this  
44 state, provided that municipal, cooperative, or mutual nonprofit telephone  
45 companies shall be included in this definition only for the purposes of  
46 sections 62-610 and 62-617 through 62-620, Idaho Code. Except as otherwise  
47 provided by statute, telephone corporations providing: (a) radio paging,  
48 mobile radio telecommunications services, answering services, ~~(including~~  
49 ~~computerized or otherwise automated answering or voice message services)~~~~;~~  
50 ~~or~~; (b) one-way transmission to subscribers of: (i) video programming~~;~~ or

(ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying; or (c) voice over internet protocol service or internet protocol-enabled service are exempt from any requirement of this chapter or title 61, Idaho Code, in the provision of such services; provided, that the providers of these exempted services shall have the benefits given them under section 62-608, Idaho Code.

(16) "Voice over internet protocol service" or "VoIP service" means an internet protocol-enabled service that facilitates real time, two-way voice communication that originates from, or terminates at, a user's location and permits the user to receive a call that originates from the public switched telephone network and terminates a call on the public switched telephone network. "Voice over internet protocol service" does not include a service that uses ordinary customer premises' equipment with no enhanced functionality that originates from and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of internet protocol technology.

SECTION 3. That Section 62-618, Idaho Code, be, and the same is hereby amended to read as follows:

62-618. PREEMPTION. The provisions of this chapter preempt, eliminate, and prohibit any economic, franchise or licensing regulation of providers of VoIP or IP-enabled services or telephone corporations subject to this chapter by cities, counties, incorporated or unincorporated areas, special use districts, or any other local governmental entity, of any kind.

SECTION 4. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-618A, Idaho Code, and to read as follows:

62-618A. VOIP AND IP-ENABLED SERVICES. No department, agency, commission or political subdivision of the state shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating the entry, rates, terms or conditions of VoIP service or IP-enabled service. Nothing in this title, or title 61, Idaho Code, shall be construed to:

(1) Require or prohibit the assessment on VoIP service for nondiscriminatory emergency communications fees, telecommunications relay service fees, Idaho telecommunications service assistance program fees or state universal service fund fee;

(2) Exempt VoIP service or IP-enabled service from the Idaho consumer protection act, chapter 6, title 48, Idaho Code, or affect the attorney general's authority to apply and enforce that chapter; or

(3) Modify or affect the rights or obligations of any entity, including the Idaho public utilities commission, arising from 47 U.S.C. section 214(e), 47 U.S.C. section 251 or 47 U.S.C. section 252, including a wholesale communications provider certification granted by the Idaho public utilities commission.

1       SECTION 5. That Section 18-6609, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3       18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:

4       (a) "Broadcast" means the electronic transmittal of a visual image with  
5 the intent that it be viewed by a person or persons.

6       (b) "Disseminate" means to make available by any means to any person.

7       (c) "Imaging device" means any instrument capable of recording, stor-  
8 ing, viewing or transmitting visual images.

9       (d) "Intimate areas" means the buttocks, genitals or genital areas of  
10 males or females, and the breast area of females.

11       (e) "Person" means any natural person, corporation, partnership, firm,  
12 association, joint venture or any other recognized legal entity or any  
13 agent or servant thereof.

14       (f) "Place where a person has a reasonable expectation of privacy"  
15 means:

16       (i) A place where a reasonable person would believe that he could  
17 undress, be undressed or engage in sexual activity in privacy,  
18 without concern that he is being viewed, photographed, filmed or  
19 otherwise recorded by an imaging device; or

20       (ii) A place where a person might reasonably expect to be safe from  
21 casual or hostile surveillance by an imaging device; or

22       (iii) Any public place where a person, by taking reasonable  
23 steps to conceal intimate areas, should be free from the viewing,  
24 recording, storing or transmitting of images obtained by imaging  
25 devices designed to overcome the barriers created by a person's  
26 covering of intimate areas.

27       (g) "Publish" means to:

28       (i) Disseminate with the intent that such image or images be made  
29 available by any means to any person; or

30       (ii) Disseminate with the intent that such images be sold by an-  
31 other person; or

32       (iii) Post, present, display, exhibit, circulate, advertise or  
33 allow access by any means so as to make an image or images available  
34 to the public; or

35       (iv) Disseminate with the intent that an image or images be  
36 posted, presented, displayed, exhibited, circulated, advertised  
37 or made accessible by any means and to make such image or images  
38 available to the public.

39       (h) "Sell" means to disseminate to another person, or to publish, in ex-  
40 change for something of value.

41       (2) A person is guilty of video voyeurism when:

42       (a) With the intent of arousing, appealing to or gratifying the lust  
43 or passions or sexual desires of such person or another person, or for  
44 his own or another person's lascivious entertainment or satisfaction of  
45 prurient interest, or for the purpose of sexually degrading or abusing  
46 any other person, he uses, installs or permits the use or installation  
47 of an imaging device at a place where a person would have a reasonable  
48 expectation of privacy, without the knowledge or consent of the person  
49 using such place; or

(b) He either intentionally or with reckless disregard disseminates, publishes or sells or conspires to disseminate, publish or sell any image or images of the intimate areas of another person or persons without the consent of such other person or persons and he knows or reasonably should have known that one (1) or both parties agreed or understood that the images should remain private.

(3) A violation of this section is a felony.

(4) This section does not apply to an interactive computer service, as defined in 47 U.S.C. section 230(f)(2), an information service, as defined in 47 U.S.C. section 153 or a telecommunication service, as defined in section 61-121(2) or 62-603(134), Idaho Code, for content provided by another person, unless the provider intentionally aids or abets video voyeurism.

SECTION 6. That Section 26-2239, Idaho Code, be, and the same is hereby amended to read as follows:

26-2239. EXEMPTIONS. The provisions of this act shall not apply to the following:

(1) Persons licensed to practice law in this state, to the extent that they are retained by their clients to engage in activities authorized by this act, and such activities are incidental to the practice of law. Such exemption shall not apply to an attorney engaged in a separate business conducting the activities authorized by this act;

(2) Any regulated lender as defined in section 28-41-301, Idaho Code, and its subsidiary, affiliate or agent to the extent that the regulated lender, subsidiary, affiliate or agent collects for the regulated lender or engages in acts governed by this act which are incidental to the business of a regulated lender;

(3) Any bank, trust company, credit union, insurance company or industrial loan company authorized to do business in this state;

(4) Any federal, state or local governmental agency or instrumentality;

(5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state while engaged in acts authorized by his real estate license;

(6) Any person authorized to engage in escrow business in this state while engaged in authorized escrow business;

(7) Any mortgage company engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code, except a mortgage company engaged in a separate business conducting the activities authorized by this act;

(8) Any court appointed trustee, receiver or conservator;

(9) Any telephone corporation, as defined in subsection (105) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent;

(10) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons

1 to whom he is so related or affiliated and if the principal business of such  
2 person is not the collection of debts.

3 SECTION 7. That Section 61-1302, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 61-1302. DEFINITIONS. In this chapter:

6 (1) "Administrator" means the person with whom the Idaho public utili-  
7 ties commission contracts to administer the program for delivery of telecom-  
8 munications relay services.

9 (2) "Commission" means the Idaho public utilities commission.

10 (3) "Communications impaired" mean individuals who are hearing-im-  
11 paired or speech-impaired as defined in title IV, section 401, Americans  
12 with disabilities act of 1990, public law 101-336, 104 stat. 327, 336-69 (47  
13 U.S.C. section 225) or regulations promulgated pursuant thereto.

14 (4) "Local exchange company" means a telephone corporation which pro-  
15 vides access lines to residential and business customers with the associ-  
16 ated transmission of two (2) way interactive switched voice communication  
17 within a geographic area where basic local exchange rates rather than mes-  
18 sage telecommunications service rates apply.

19 (5) "Message telecommunications service" shall have the meaning pre-  
20 scribed in section 62-603(~~69~~), Idaho Code.

21 (6) "Program" means the effort directed by the administrator pursuant  
22 to this chapter to establish and operate an Idaho system to provide telecom-  
23 munications relay services.

24 (7) "Telephone corporation" shall have the meaning prescribed in sec-  
25 tion 62-603(~~105~~), Idaho Code.

26 (8) "Telecommunications relay services (TRS)" mean services through  
27 which a communications impaired person, using specialized telecommunica-  
28 tions equipment, may send and receive messages to and from a noncommuni-  
29 cations impaired person whose telephone is not equipped with specialized  
30 telecommunications equipment and through which a noncommunications im-  
31 paired person may, by using voice communication, send and receive messages  
32 to and from a communications impaired person.

33 SECTION 8. That Section 62-609, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 62-609. IMPUTED AND NONDISCRIMINATORY ACCESS CHARGES -- COMMISSION  
36 AUTHORITY. (1) A telephone corporation, which provides basic local exchange  
37 service, and which also provides message telecommunications service shall  
38 impute to itself its prices of special access or private line access and  
39 switched access for the use of essential facilities used in the provision of  
40 message telecommunications service, special access or private line access  
41 services and WATS service or their equivalents. Such imputation shall be in  
42 the aggregate on a service by service basis. All other providers of message  
43 telecommunications service, special access or private line access services  
44 and WATS service or their equivalents shall impute to themselves, in the  
45 aggregate on a service by service basis, their individual cost of special or  
46 switched access or its equivalent in their pricing.

1       The commission shall define in an appropriate proceeding what are es-  
2       sential facilities for the purpose of this subsection and shall resolve any  
3       dispute which may arise under this subsection.

4       (2) Telecommunication services which are subject to the provisions  
5       of this chapter and which services utilize special or switched access,  
6       shall be made available by the telephone corporation for resale. No tele-  
7       phone corporation shall, as to its prices or charges for or the provision of  
8       such services, make or grant any preference or advantage to any telephone  
9       corporation or to a provider of services exempted from regulation under sec-  
10      tion 62-603(134), Idaho Code, or subject any telephone corporation or any  
11      provider of services exempted from regulation under section 62-603(134),  
12      Idaho Code, to any prejudice or competitive disadvantage with respect to its  
13      prices or charges for providing access to its local exchange network nor es-  
14      tablish or maintain any unreasonable difference as to its prices or charges  
15      for access to its local exchange network.

16      (3) Notwithstanding the provisions of section 62-614, Idaho Code, if,  
17      after negotiation, a dispute under this section exists between or among  
18      telephone corporations or between or among telephone corporation(s) and  
19      provider(s) of services exempted from regulation under section 62-603(134),  
20      Idaho Code, such dispute shall be determined by the commission upon petition  
21      of any affected telephone corporation or provider(s) of services exempted  
22      from regulation under section 62-603(134), Idaho Code.

23      Information disclosed to the commission for resolution of disputes un-  
24      der this section shall be provided by the telephone corporations with appro-  
25      priate safeguards for the protection of business or trade secrets.